

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           THE NATIONAL RIFLE  
7           ASSOCIATION

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the Commissioner  
12           of Political Practices (Commissioner) to consider the appeal of the principal  
13           referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-306,  
14           the principal appealed the Commissioner's assessment of a civil penalty resulting  
15           from its late filing of two lobbying disclosure reports. The principal filed a written  
16           Waiver of Hearing waiving its right to an in-person hearing, and submitted a written  
17           statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in the  
19           Commissioner's file, and the applicable law, the Commissioner makes the following  
20           findings of fact, conclusions of law, and order.

21                   **FINDINGS OF FACT**

- 22           1. The National Rifle Association is a principal registered with the Commissioner.
- 23           2. The 2003 Montana Legislature passed House Bill 38 and the governor signed  
24           it into law. The law took effect on February 18, 2003. House Bill 38, now codified  
25           at § 5-7-306, MCA, establishes civil penalties that are required to be assessed against any  
26           person who fails to file lobbying disclosure reports within the time required by law.
- 27           3. The post-Session 2007 lobbying disclosure report for the National Rifle  
            Association was required to be filed no later than May 29, 2007, and the post-Special  
            Session 2007 lobbying disclosure report was required to be filed no later than June 14, 2007.

1       4. On May 16, 2007 and again on June 12, 2007, the office of the Commissioner  
2 sent emails to all principals, including the National Rifle Association. The first  
3 email advised principals that a post-Session 2007 lobbying financial disclosure  
4 report was required to be filed by May 29, 2007. The second advised that a post-  
5 Special Session 2007 lobbying disclosure report was required to be filed no later than  
6 June 14. The emails referenced the appropriate form that was required to be filed,  
7 known as a form L-5A, and noted that the form was available for download on the  
8 Commissioner's website. Citing the provisions of § 5-7-208(4), MCA, the email  
9 stated: "A report must be filed in this office even though neither lobbying nor  
10 incurring of lobbying expenses may have occurred."

11       5. The National Rifle Association failed to file its L-5A on or before the  
12 respective due dates.

13       6. On May 30, 2007 and June 15, 2007, the Commissioner sent letters via email  
14 to Christopher Cox stating that L-5A reports were due by May 29, 2007 and June 14,  
15 2007, respectively, but had not been received. The letters stated that a civil penalty  
16 started being assessed on May 30, 2007 and June 14, 2007, respectively, at \$50 per  
17 day, and would continue until the reports were filed or until the penalty amount  
18 reached \$2,500. The letters urged the principal to fax the delinquent report  
19 immediately, followed by a hard copy.

20       7. On June 19, 2007, the principal filed both reports. Because the reports were  
21 filed fifteen business days and three business days late, respectively, fines of \$750 in  
22 the first instance and \$150 in the second were assessed.

23       8. The National Rifle Association requested a hearing to contest the civil  
24 penalties. The Commissioner issued a Notice of Agency Action and Opportunity for  
25 Hearing on August 9, 2007. The National Rifle Association filed a written Waiver  
26 of Hearing and submitted a written statement for the Commissioner's consideration.

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9. In a written statement Christopher Cox asked on behalf of the National Rifle Association that the penalty be reduced or waived. He stated that the late filing was an aberration; that the NRA is committed to preventing repeat occurrences, and that the individual assigned responsibility for filing is inexperienced, unfamiliar with the requirements, and was distracted by the serious health concerns of her mother who was recently hospitalized.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing -- suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

4. § 5-7-208(2), MCA, requires a lobbying disclosure report to be filed with the Commissioner “no later than 30 days following adjournment of a Legislative Session,” and the report must include “all payments made during the session, except as previously reported.” § 5-7-208(4), MCA.

## MEMORANDUM OPINION

Information offered in a written statement by Christopher Cox states that late filing of the report was an aberration – the result of the inexperience of a subordinate distracted by the health concerns of an ailing mother.

1 While an allowance may be made when the principal authority is incapacitated  
2 by illness or death in the family, I find that in this instance no such allowance can be  
3 made. Even though the principal authority may assign responsibility to a subordinate  
4 to file the necessary reports, it is the principal authority who is responsible for the  
5 filing and who receives all instructions and notices in this regard.

6 I urge principals to carefully review and understand the statutory filing  
7 requirements to ensure that they comply with the law and to avoid the assessment of  
8 civil penalties in the future.

9  
10 **ORDER**

11 THEREFORE, IT IS HEREBY ORDERED that the National Rifle Association  
12 shall pay civil penalties of \$750 and \$150 to this office no later than October 1,  
13 2007.

14 DATED this 5<sup>th</sup> day of September, 2007.

15  
16 

17 Dennis Unsworth  
18 Commissioner of Political Practices

19 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
20 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
21 4-701 through 2-4-711.

22 **CERTIFICATE OF SERVICE**

23 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT,  
24 CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

25 Christopher Cox  
26 National Rifle Association  
27 11250 Waples Mill Rd.  
Fairfax VA 22030

DATED: September 5th, 2007

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Mary Baker

Program Supervisor

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